

EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
3

4 -----
5 IN RE: HIGH-TECH EMPLOYEE)
6 ANTITRUST LITIGATION) No. 11-CV-2509-LHK
7 -----

8
9
10 HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY
11
12

13 VIDEOTAPED DEPOSITION OF MICHAEL DEVINE
14 San Francisco, California
15 Wednesday, October 24, 2012
16 Volume I
17
18
19

20 Reported by:
21 ASHLEY SOEVYN
22 CSR No. 12019
23 JOB No. 1545479
24

25 PAGES 1 - 265

Page 1

1 A. As I said before, I was unhappy with the 10:09:26
2 role, basically. It was considerably less new 10:09:38
3 development than I had thought when I came on 10:09:42
4 board. 10:09:45

5 Q. What is it that you wanted to do at 10:09:45
6 Dashwire? 10:09:50

7 A. Develop cutting edge new technology in 10:09:54
8 their market space, which is configuring mobile 10:09:57
9 devices for end users. And it was considerably less 10:10:03
10 new development and a lot more bug fixing than I had 10:10:18
11 anticipated. And I think a term -- this might be 10:10:22
12 familiar with -- there's R&D and sustained 10:10:34
13 engineering. 10:10:43

14 This is represented as an R&D job and in a 10:10:43
15 startup, even though we've evolved, we're still a 10:10:45
16 startup and then in practice it was sustained 10:10:49
17 engineering -- of course there's always a portion of 10:10:53
18 that. Some places there's more than others. More 10:10:57
19 than half, but a -- 10:11:15

20 Q. Did you have any expectations, Mr. Devine, 10:11:15
21 with respect to the bonus plan that you've been 10:11:18
22 discussing with Dashwire? In other words, what did 10:11:20
23 you expect the bonus plan to be? 10:11:26

24 A. Oh, no details. I had no expectation of 10:11:28
25 details. I just knew that they were -- and they 10:11:30

1 even said they were going to be putting one 10:11:33
2 together. 10:11:35

3 Q. The reason I asked is you've mentioned 10:11:36
4 options before -- in stocks. I want to see if I 10:11:37
5 understand. 10:11:44

6 Were you expecting a bonus plan that 10:11:45
7 included some stock options feature? 10:11:47

8 A. My understanding was no. There would be no 10:11:51
9 stock options because HTC does not do that. My 10:11:59
10 understanding is that's for higher executives. That 10:12:07
11 may or may not be true, but that's my understanding. 10:12:10
12 So I figured then, okay, then the bonus will be -- 10:12:13
13 appropriately make up for that. Assuming that it 10:12:20
14 would be appropriate once they got it together. 10:12:27

15 Q. Is the ability to receive a bonus an 10:12:41
16 important component of compensation for you when are 10:12:45
17 deciding whether or not to accept employment? 10:12:48

18 A. It's a factor in considering employment. 10:12:53

19 Q. Whether or not a company offers stock 10:13:07
20 options, is that a factor that you consider? 10:13:09

21 A. Yes. 10:13:15

22 Q. What about stock? Is that another factor 10:13:20
23 that you consider? 10:13:24

24 A. Yes. 10:13:25

25 Q. Are there other components of -- or types 10:13:25

1 of compensation that you consider when deciding 10:13:29
2 whether or not to take a job with a potential 10:13:32
3 employer? 10:13:42

4 A. Vague -- or no -- soft forms of 10:13:48
5 compensation such as the sense of work-life balance 10:13:53
6 offered by the company. And the degree to which the 10:13:58
7 company makes a commitment or seems to be committed 10:14:09
8 to growing the skills for their employees. 10:14:13

9 Like are they investing in their employees, 10:14:18
10 basically. To -- in looking at the compensation 10:14:26
11 regarding stock and things, it's as much looking at 10:14:43
12 it for me as other employees too because it has to 10:14:49
13 be -- the compensation package would have to be 10:14:55
14 compelling to other employees -- or new employees 10:14:57
15 for them to be able to hire new ones. 10:15:00

16 So it should be appropriate for the market, 10:15:03
17 which is why, when I assume a market is operating, I 10:15:05
18 can go comfortably into a startup that says they're 10:15:09
19 going to put together a bonus package because I know 10:15:14
20 that they will have to put together an appropriate 10:15:18
21 bonus package in order to recruit people. 10:15:21

22 So there's an assumption that a fair market 10:15:25
23 is in operation. And so that's part of it. If a 10:15:27
24 company has appropriate compensation packages, then 10:15:37
25 I know they will be able to hire good people. So 10:15:39

1 that's a factor. I guess -- 10:15:45

2 Q. And -- I'm sorry. 10:15:46

3 A. -- I just bring that up because if -- 10:15:50

4 because I remember specifically stating that during 10:15:52

5 my negotiations about this bonus with Dashwire. I 10:15:55

6 basically said, "Look, you know, I'm going in, you 10:15:59

7 know, assuming you guys are going to put together a 10:16:04

8 bonus plan. And I know you're not going to have 10:16:07

9 much luck hiring other people if you don't have one. 10:16:14

10 So I am assuming you're getting one." So that was a 10:16:17

11 factor. 10:16:20

12 Q. And is the flip side true that if the 10:16:24

13 employer is not offering what you referred to as 10:16:30

14 competitive packages, that employees may leave those 10:16:34

15 companies? Not only it can't attract talent, but it 10:16:38

16 would also lose talent? 10:16:48

17 A. Yeah, they would have to keep their 10:16:52

18 packages. Moving with the market, I would assume. 10:16:54

19 Q. And that's a factor that you consider when 10:17:01

20 exploring job opportunities with potential 10:17:02

21 employers? 10:17:10

22 A. I can't really explore that because I don't 10:17:11

23 have that information. So I would say, no. I would 10:17:15

24 just hope that -- I mean, companies -- I assume 10:17:19

25 companies have to do that because I assume that fair 10:17:21

1 market is in play. And if they don't do that, they 10:17:28
2 will lose people to other companies that offer 10:17:32
3 appropriate compensation. 10:17:43
4 Q. You mentioned that you're currently looking 10:18:09
5 for employment, correct? 10:18:11
6 A. Yes. 10:18:15
7 Q. And you've applied to roughly 12 to 24 -- 10:18:16
8 in your words, a dozen to two dozen companies? 10:18:20
9 A. It was an estimate, yeah. 10:18:28
10 Q. Yeah. And can you list for me the 10:18:30
11 companies that you've applied to? 10:18:32
12 A. I had two or three interactions with a 10:18:40
13 recruiter recruiting for contract jobs with Intel. 10:18:45
14 And I applied for job with the college I went to, 10:18:54
15 Grinnell College. 10:19:03
16 THE REPORTER: Which college? I can't hear 10:19:03
17 you. 10:19:03
18 THE WITNESS: Grinnell College, 10:19:03
19 G-r-i-n-n-e-l-l, College. 10:19:03
20 I would have to look to -- at this very 10:19:07
21 moment, I can't remember the others or -- 10:19:19
22 BY MR. KIERNAN: 10:19:21
23 Q. What would you look at? 10:19:22
24 A. My e-mails. There is almost always an 10:19:28
25 e-mail. It's always "Send me your resume." 10:19:33

1 opportunities at various companies. Like when you 14:39:32
2 mentioned Boeing, University of Washington, 14:39:36
3 Microsoft, and Amazon. Have you used Apple in 14:39:38
4 Apple's career site in that way? 14:39:44
5 MR. HARVEY: Objection, vague. 14:39:47
6 THE WITNESS: I don't recall, but there's a 14:39:54
7 good chance I did. And the way my memory works, if 14:39:55
8 I'm shown a specific, I may suddenly remember all 14:39:59
9 kinds of weird, peculiar details about it. 14:40:08
10 BY MR. KIERNAN: 14:40:15
11 Q. Okay. Any other ways that you -- between 14:40:15
12 January 1, 2005 and the present that you have looked 14:40:17
13 for job opportunities or received information about 14:40:23
14 job opportunities? 14:40:27
15 MR. HARVEY: Objection, asked and 14:40:28
16 answered. 14:40:30
17 MR. KIERNAN: I asked "any other ways." 14:40:31
18 THE WITNESS: Uh-huh. 14:40:33
19 MR. HARVEY: Same objection. 14:40:37
20 THE WITNESS: As far as I can recollect 14:40:37
21 now, I think every method fits into those categories 14:40:40
22 we've discussed. 14:40:45
23 BY MR. KIERNAN: 14:40:49
24 Q. Focusing on the pre-2005 period, did you 14:40:49
25 use the same sources of information to explore job 14:40:54

1	opportunities or receive information about job	14:41:01
2	opportunities?	14:41:04
3	A. Roughly.	14:41:10
4	Q. What would be different?	14:41:12
5	A. Specific company sites would be different	14:41:14
6	specific companies, I would assume. Different	14:41:18
7	e-mail groups. In Colorado, there is Rocky Mountain	14:41:23
8	Internet User Group. That is one. I think in the	14:41:31
9	Bay Area there is one too, I don't know what it's	14:41:37
10	called. But the same idea again.	14:41:39
11	Q. Okay. Now, I want to put aside the jobs.	14:42:09
12	Now, I want to focus on compensation.	14:42:12
13	A. Okay.	14:42:14
14	Q. So going back to interrogatory number 7 --	14:42:15
15	and I want to focus again like we did on January 1,	14:42:23
16	2005 to the present time period.	14:42:26
17	Describe every source of information you've	14:42:28
18	obtained or received about compensation for jobs in	14:42:30
19	the market.	14:42:35
20	A. The difference would be for the time period	14:42:48
21	from 2005, it would be that I don't specifically	14:42:50
22	recall information from co-workers.	14:42:56
23	Q. Okay. So you received compensation	14:43:06
24	information from cold calls?	14:43:07
25	A. Spam calls and cold calls, yeah.	14:43:12

1 Q. Spam calls and cold calls. What other 14:43:23
2 sources of information did you obtain or receive 14:43:26
3 compensation information between January 1, 2005 and 14:43:30
4 the present? 14:43:35

5 A. Any professional contacts that I don't 14:43:37
6 recall specific instances -- Internet resources -- 14:43:40
7 job listings often say, "Here is the range you're 14:43:44
8 looking for." Of course, usually stated low. 14:43:47

9 And news sites about salary or 14:43:54
10 compensation -- may have looked at like Salary.com 14:44:05
11 or Glass Door or whatever -- Ceiling.com. But 14:44:16
12 briefly, I recall -- I don't know when, but I recall 14:44:35
13 looking at those and kind of thinking this is -- 14:44:38
14 like reliable information. So it wasn't anything I 14:44:50
15 based any decisions on. 14:44:58

16 Q. It looks like in your documents you were 14:45:00
17 signed up with Payscale.com. Do you recall that? 14:45:04

18 A. Yeah, maybe. 14:45:10

19 Q. You don't recall? 14:45:11

20 A. I vaguely recall, if that's the one -- when 14:45:13
21 does it -- in my documents, when did it say I was 14:45:18
22 signed up with them? Do you remember? 14:45:21

23 Q. 2007. 14:45:23

24 A. Okay. I don't remember that. I did 14:45:27
25 obviously, but I don't remember it though. 14:45:41

1	contacts?	14:55:02
2	A. Yeah. I do remember asking my friend	14:55:07
3	Morgan Woodson what are the going contractor rates	14:55:11
4	down in the Bay Area. That was -- that might have	14:55:16
5	been in connection with the Bay Area contract	14:55:27
6	opportunity with Intel.	14:55:30
7	Q. What about for non-contracted jobs?	14:55:36
8	A. I don't recall anything like that.	14:55:41
9	Q. Are the -- you've -- looking at your	14:55:48
10	resume, you've had a number of jobs that were	14:55:53
11	contractor jobs?	14:55:55
12	A. Uh-huh.	14:55:56
13	Q. Were they all hourly?	14:55:57
14	A. Yeah, usually contractor -- yes, they were	14:55:58
15	all hourly.	14:56:00
16	Q. Is that typical of most of these	14:56:02
17	contracting jobs for software engineers are	14:56:05
18	hourly?	14:56:07
19	A. For ones I did, yes. Some people do	14:56:08
20	project jobs. I just never -- I never did any of	14:56:20
21	those.	14:56:22
22	Q. Did you ever apply to any?	14:56:23
23	A. No.	14:56:27
24	Q. Why not?	14:56:29
25	A. They don't list them -- I don't --	14:56:30

1 Q. You referred to something as a spam call? 14:56:52

2 A. Uh-huh. 14:56:57

3 Q. What is a spam call? 14:56:57

4 A. That would be a call that comes from a call 14:56:59

5 center, frequently from overseas, with someone 14:57:07

6 saying there is a position at a global high-tech 14:57:10

7 major -- in your area or something like that. And 14:57:23

8 they are representing any of these temporary 14:57:25

9 agencies and whenever they see you do an update on 14:57:28

10 your resume to Monster or Dice, you start getting 14:57:34

11 all these calls and they are almost all like that. 14:57:39

12 And they are virtually all of them have not 14:57:43

13 actually read, or looked at the resume and aren't 14:57:53

14 even calling with respect to a specific opportunity. 14:57:57

15 That's what I mean by that. 14:58:01

16 Q. Are you limiting -- you use an example of a 14:58:03

17 phone call, but is it limited by the medium in which 14:58:06

18 they contact you? 14:58:10

19 A. No. They are spamming e-mails as well, I'm 14:58:11

20 sure. And they produced a lot of those, I am 14:58:15

21 assuming. 14:58:19

22 Q. And whether or not it's a spam e-mail, does 14:58:19

23 that depend on -- that depends on the perception of 14:58:22

24 the receiver of the e-mail? 14:58:29

25 A. Well, you can tell usually right away. If 14:58:30

1 there are job details and they are complete 14:58:36

2 mismatched, you can tell that they did not read it. 14:58:39

3 Like either from skill level, experience level or -- 14:58:41

4 yeah, that. 14:58:49

5 You can tell when they are bottom fishing 14:58:49

6 for absurdly low pay. 14:58:52

7 Q. Is that what I've seen -- perhaps colorful 14:58:54

8 e-mails about bottom fishing -- what do you mean by 14:59:00

9 "bottom fishing"? 14:59:04

10 A. There would be friends that are trying to 14:59:05

11 place people on temporary contracts at companies and 14:59:07

12 working to pay for the field significantly below 14:59:17

13 median wages, even compared to permanent employment. 14:59:25

14 So when you get a job looking for someone 14:59:32

15 with five to seven years of experience in say C++ 14:59:36

16 and they want to pay \$32 an hour, it's a lot of 14:59:40

17 things wrong with that. They are just trying to 14:59:48

18 exploit the ignorant, basically. 15:00:00

19 Q. And then you mentioned -- did you set up 15:00:04

20 any filters on your e-mail in an attempt to prevent 15:00:09

21 receiving those sorts of spam calls? 15:00:16

22 A. Not that I can recall. I don't think you 15:00:26

23 can. I may have like in one of the worse companies, 15:00:36

24 maybe I might have dumped them into spam 15:00:42

25 automatically. 15:00:43

1 Q. You don't recall -- 15:00:45

2 A. It would have been like Aditi.com, which is 15:00:46

3 an obnoxious one. 15:00:56

4 THE REPORTER: Which one? I can't hear 15:00:56

5 you. 15:00:56

6 THE WITNESS: Aditi.com, A-d-i-t-i.com. I 15:00:56

7 think it's one of the call center based companies. 15:00:56

8 I think -- just as an example, I don't know that I 15:01:05

9 put them into a spam filter, but I might have dumped 15:01:08

10 one of them, but it would have been on the source of 15:01:12

11 it, not keywords that would have otherwise lost me 15:01:15

12 opportunities that I do want. 15:01:18

13 BY MR. KIERNAN: 15:01:23

14 Q. So just taking me through it, you would 15:01:23

15 have to determine whether the spam -- sort of on a 15:01:26

16 case-by-case basis? 15:01:37

17 A. Yeah. 15:01:39

18 Q. And how would you define a cold call? You 15:01:39

19 define a spam call and you also referred to cold 15:01:42

20 calls. How would you define that? 15:01:46

21 A. That would be someone calling me without me 15:01:47

22 having in at least a reasonable period of time prior 15:01:51

23 to that, contacting me regarding a job opportunity 15:01:54

24 via e-mail, phone, whatever, or -- might not be the 15:01:57

25 best -- 15:02:02

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 31st day of October, 2012.
24

25 _____
ASHLEY SOEVYN, CSR No. 12019